IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO.415 OF 1985

1. Mrs.Maria Sofia Jehangir Patel, a housewife of Christian Inhabitant residing at Goolestan, 37, Cuffe Parade, Colaba, Mumbai - 400 005

2. Mr.Pesi Shavak Patel, a businessman of Bombay Parsi Zoroastrian Inhabitant residing at Lyndewode House, Bomanji Petit Road, Mumbai 400 026 the only two Executors and Trustees appointed by para 1 of Will dated 28th January, 1998 of Mr.Jehangir Pestonji Patel who died at Bombay on 15-5-1998. .. Applicants.

Versus

The Commissioner of Income-tax, (Appeals) - II, Bombay .. Respondent.

Mr.J.D. Mistry with Ms.S. Vedpathak i/by Manekshah & Sethna for the Appellants.

Mr.A.S. Rao for the respondent.

CORAM : F.I. REBELLO & J.P. DEVADHAR, JJ.

JUDGMENT RESERVED ON : 8TH AUGUST, 2007.

JUDGMENT PRONOUNCED ON : 27TH AUGUST, 2007.

ORAL JUDGMENT : (Per J.P. Devadhar, J.)

1. At the instance of the applicant-assessee, the Income Tax Appellate Tribunal, Mumbai has forwarded the following questions of law for the opinion of this Court under Section 256(1) of the Income Tax Act, 1961.

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the credit for the tax deducted at source from the dividends was to be given to the firm and not to the partners ?

2. Whether, on the facts and in the circumstances of the case, if the credit of the entire tax was not to be given to the partners and if there was any tax deducted at source remaining unabsorbed after meeting the firm's tax liability, such tax could be apportioned among the partners and credit for such tax should be given to them in their individual assessment ?

2. The assessment year involved herein is A.Y. 1976-77.

3. Counsel on both side state that the questions raised herein is covered by the judgment of this Court in Income Tax Reference No.414 of 1985 delivered today i.e. 27th August, 2007.

4. For the reasons stated in Income Tax Reference No.414 of 1985, question No.1 referred to us is answered in favour of the assessee and against the revenue. In view of answer to question No.1, answer to question No.2 becomes academic.

5. Accordingly, reference is disposed of by answering the question No.1 in favour of the assessee and against the revenue and question No.2 is returned unanswered.

(J.P. DEVADHAR, J.) (F.I. REBELLO, J.)